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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,572	01/10/2002	Neil Miles	IPPM Case 7	7931

7590 05/16/2003

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[REDACTED] EXAMINER

MCCORMICK, SUSAN B

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1661

DATE MAILED: 05/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/043,572	MILES, NEIL	
	Examiner Susan B. McCormick	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 March 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

**Detailed Action**

The amendment of March 5, 2003 is hereby acknowledged and entered as paper number 4.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office action.

**Claim Rejections- 35 U.S.C. § 112**

Claim 1 remains rejected under U.S.C. 112, first and second paragraphs, for reasons stated in the prior Office action (paper number 2).

**Response to Arguments**

Applicant's amendment dated March 5, 2003 failed to address the following grounds of rejection:

A. Applicant failed to provide a color description for the observed variety with reference to a recognized color chart. The Royal Horticultural Society Color Chart (RHS), Maerz and Paul or Pantone are examples of suitable color charts. A color chart reference should include, for example, the trunk, branches, leaves (both surfaces), petals (both surfaces), fruit (skin and flesh), etc. See MPEP 1605.

B. Applicant failed to set forth in the specification the age of the observed plant.

C. Applicant failed to be more descriptive with the comparison between the parents 'Suncling' and 'New Jersey Cling 81' and the observed plant, 'V75024' in how they differ from each other.

D. Additional information should be imported into the specification relative to the observed height and spread for the observed tree at a specified age and location of culture, and/or amount of growth over a specified period of time.

E. Information should be imported into the specification relative to plant vigor so as to more meaningfully describe. Such could include, (for example) amount of growth over a specified period of time.

F. Applicant failed to set forth in the specification the trunk diameter (usually measured at a given height above soil level), texture and bark coloration in the interest of providing as complete a description of the observed plant as is reasonably possible.

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G. Applicant failed to set forth a more detailed botanical description relative to branch size (diameter), color and internode length.

H. Applicant failed to disclose information regarding the amount (average per square inch), size (length and width) and color of the lenticels.

I. Applicant failed to disclose information regarding the shape of the apex and base, shape, margin, texture, color (both surfaces), venation pattern, vein color and leaf arrangement of the observed leaf.

J. Applicant failed to disclose the length, diameter and color of the petiole. The recitation "medium-long, longer than the comparative varieties" is vague and insufficient in this regard. Clarification is needed.

K. Applicant failed to disclose the shape, diameter, length and color of the flower bud of the observed plant.

L. Applicant failed to set forth in the specification the amount, size and color of the sepals.

M. Applicant failed to set forth in the specification the flower diameter as well as the size (length and width), shape, margin, color (both surfaces), texture, shape of the apex and base of the observed flower petal. The terms the Applicant has disclosed in the specification, i.e. "medium," "Burgundy," "elongated," and "medium pink" are vague and insufficient in describing the flower and petals. Correction is needed.

N. Applicants failed to set forth an approximate date of bud burst and bloom time in the specified location of culture.

O. Applicant failed to set forth in the specification the reproductive organs and disclose information and describe these structures (colors, sizes, amount) in the interest of providing as complete a botanical description of the observed plant as is reasonably possible. The term the Applicant has disclosed

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in the specification, i.e. "is above" (in describing the position of the stigma) is vague and insufficient in describing the reproductive organs. Correction is needed.

P. On pages 4 and 5, the terms and colors that are used in describing the observed fruit (for example, "medium-shallow," "medium-narrow," medium-small," "medium," "cream yellow," orange-yellow," "red," "tan," etc.) should be in quantitative measurements and referenced with an employed color chart.

Q. The observed fruit weight should be disclosed in the specification.

R. Applicant failed to disclose information regarding the stone and kernel with regards to the size (length, diameter), color, texture and shape.

S. Applicant failed to disclose known shipping and storage characteristics of the observed variety, for example, the number of days the fruit has been stored under specific conditions.

T. Applicant failed to set forth the observed dates of first and last pick in the specified location of culture in the interest of providing as complete a botanical description as is reasonably possible.

U. Applicant failed to disclose information to the observed plant's winter hardiness and drought/heat tolerance.

Comments

Due to the amount of revision seen necessary in this application, it is suggested that Applicant file a substitute specification, incorporating all additions, deletions and modifications so as to provide the printer a clean copy at the time of allowance. Applicant should specifically authorize cancellation of the present specification to the same.

Amendments in a Revised Format Now Permitted

The USPTO is permitting applicants to submit amendments in a revised format. The revised amendment format is essentially the same as the amendment format that the Office is considering adopting via a revision to 37 CFR 1.121. Compliance to the revision to 37 CFR 1.121 (if adopted) will be mandatory by July of 2003. Complete details to the revised amendment format can be found on the Internet at <http://www.uspto.gov/web/offices/pac/dapp/ola/preognitice/revamdtprac.htm>.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick whose telephone number is (703) 305-1682. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

sbm

  
BRUCE R. CAMPELL, PH.D  
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TECHNOLOGY CENTER 1600